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In re Application of
Mario Bogdan et al
Application No. 09/940,261
Filed: August 27, 2001
Attorney Docket No. 1014-011US01

DECISION ON PETITION

This is a decision on the petition filed on January 27, 2004 by which petitioners request supervisory review of, and withdrawal of, the examiner's restriction requirement as promulgated on June 30, 2003 and as made final on November 17, 2003. The petition is considered pursuant to 37 CFR 1.144 and 37 CFR 1.181, and no fee is required.

The petition is granted.

A review of the application and of the claims shows that the claimed apparatus is a hand operated tool for use in assisting in the placement of device such as a printed circuit board into various electrical devices and computing systems such as a network router. As claimed, the invention is recited as a system that appears to include a housing (that might, for example, be the housing of a network router) that can receive a removable component, and a drive shaft having a groove that can engage the pin, the drive shaft being coupled to the component. Additional apparatus claims are limited to a device for inserting and extracting a removable component. Method claims are presented that recite the use of the tool.

The examiner restricted between the apparatus claims and the method claims, opining that the process claimed could be practiced by hand. The problem is that insofar as the claims are limited to the apparatus *per se*, and not to a system including the tool and the housing worked on by the tool, the tool recited is a hand tool (a handle is claimed). Obviously, a method that includes the step of "rotating a first handle" is a method performed by a hand tool. It is not clear from the examiner's explanation how the examiner proposes that the claimed method will be performed without the claimed hand tool.

Further, the examiner required that petitioner's further elect between the species of Figure 1 and the species of Figure 4 in the event that petitioners elected the apparatus claims. However, as pointed out by petitioners, Figures 1 and 4 do not show different species. Instead, the former shows schematically shows the use of the tool with a housing while the latter shows the use of two tools with a housing. Neither Figure illustrates a different tool. At best, Figures 1 and 4 might illustrate the subcombination of the tool and the combination of the tool and the housing, but they do not show different species. The examiner should note that the mere statement that "the Examiner gave species, not combination-subcombination restriction" does not convert the matter into a species situation where there aren't plural species disclosed and claimed.

The restriction requirement as promulgated and made final is not in accordance with proper Office procedure. Accordingly, it is hereby vacated. The application will be forwarded to the Supervisory Patent Examiner of Art Unit 3729 who will have the examiner promulgate an action not inconsistent with this Decision.

PETITION GRANTED.

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